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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

# Concluding observations on the fourth periodic report of Mauritius*

1. The Committee against Torture considered the fourth periodic report of Mauritius (CAT/C/MUS/4) at its 1588th and 1591st meetings, held on 17 and 20 November 2017 (CAT/C/SR.1588 and 1591), and adopted the following concluding observations at its 1606th meeting, held on 30 November 2017.

## A. Introduction

2. The Committee welcomes the submission of the State party's fourth periodic report prepared on the basis of a list of issues prior to reporting drawn up by the Committee (CAT/C/MUS/QPR/4). It expresses its appreciation to the State party for having accepted the simplified reporting procedure, as this improves the cooperation between the State party and the Committee and gives focus to the examination of the report as well as the dialogue with the delegation.

3. The Committee welcomes the dialogue held with the State party's delegation, as well as the responses provided to the questions and concerns raised during the consideration of the report. It also thanks the State party for the additional statistical data supplied that are relevant to the monitoring of the implementation of the Convention at the national level.

## B. Positive aspects

4. The Committee welcomes the political commitment to legal, policy and institutional reforms laid out in the Government Programme 2015–2019 that will help improve compliance with the State party's obligations under the Convention.

5. The Committee welcomes the State party's ratification of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in 2011.

6. The Committee welcomes the adoption of, among others, the following legislative measures by the State party in areas of relevance to the Convention:

(a) The Independent Police Complaints Commission Act, in 2016, which establishes the independent commission replacing the Police Complaints Division of the National Human Rights Commission;

(b) The Protection from Domestic Violence (Amendment) Act, in 2016, which, *inter alia*, broadens the definition of domestic violence;

* Adopted by the Committee at its sixty-second session (6 November–6 December 2017).

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(c) The Criminal Appeal (Amendment) Act, in 2013, which enables a convicted person to apply for a retrial on the basis of sufficient fresh and compelling evidence;

(d) The Protection of Human Rights (Amendment) Act, in 2012, which broadens and strengthens the mandate of the National Human Rights Commission;

(e) The National Preventive Mechanism Act, in 2012, which gives effect to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(f) The Criminal Code (Amendment) Act, in 2012, which authorizes the termination of pregnancy in specific circumstances;

(g) The Legal Aid (Amendment) Act, in 2012, which, inter alia, provides for legal assistance to persons in need during police enquiries and for bail applications.

7. The Committee welcomes the administrative and other measures taken by the State party to give effect to the Convention, including:

(a) The operationalization of the National Preventive Mechanism Division of the National Human Rights Commission, since June 2014;

(b) The adoption of the National Human Rights Action Plan 2012–2020, in 2012;

(c) The extension, since 2012, of the operating days of the Bail and Remand Court to weekends and public holidays;

(d) The opening of new detention facilities, which has helped address overcrowding in prisons;

(e) The measures taken to prevent inter-prisoner violence and suicide in places of detention.

## C. Principal subjects of concern and recommendations

### Pending follow-up issues from the previous reporting cycle

8. The Committee notes with regret the State party did not provide information on the implementation of recommendations identified for follow-up in its previous concluding observations (CAT/C/MUS/CO/3). It also notes with regret that its recommendations relating to police legislation, conditions in detention and the publication of the report of the visit by Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2007 (see CAT/C/MUS/CO/3) have not been fully implemented.

### Incorporation of the Convention into domestic legislation

9. The Committee remains concerned that the State party has not fully incorporated the provisions of the Convention into its domestic law, especially in view of the shortcomings in its anti-torture legislation (art. 2).

10. **Recalling its previous recommendation (see CAT/C/MUS/CO/3 para. 7), the Committee recommends that the State party should fully incorporate the provisions of the Convention into its domestic legislation so that they can be applied by domestic courts.**

### Absolute prohibition of torture

11. While noting that in its judgement in the case of *Director of Public Prosecutions v V. Jagdawoo & Ors* the State party's Supreme Court referred to the non-derogable right to freedom from torture and other cruel, inhuman or degrading treatment and its peremptory nature, the Committee nonetheless notes the absence in the State party's legislation of an express provision on the absolute prohibition of torture (art. 2).

12. **The State party should introduce a statutory provision on the absolute prohibition of torture declaring that no justification may be invoked for this crime**

**under any circumstances, in accordance with article 2 (2) of the Convention. It should also bring its laws, such as the provisions of section 245 of the Criminal Code on homicide and wounds and blows under lawful authority, into line with the absolute ban. The Committee draws the attention of the State party to paragraphs 5 to 7 of its general comment No. 2 (2007) on the implementation of article 2.**

**Penalties for acts of torture**

13. The Committee expresses once against its concern that penalties provided by the State party's legislation do not correspond to the grave nature of the crime of torture and do not take account of aggravating circumstances (art. 4).

14. **The State party should make the necessary legislative amendment to ensure that acts of torture carry appropriate penalties, taking into account aggravating circumstances such as permanent disability sustained by victims or death, in line with article 4 of the Convention.**

**Impunity for acts of torture and ill-treatment**

15. While noting the strong statement of the State party's Supreme Court condemning the perpetration of torture and any form of inhuman or degrading treatment by State agents, the Committee is deeply concerned that those responsible for the death of Ramdoolar Ramlogun, who was subjected to physical abuse and killed in State custody, have not been found and duly prosecuted. The Committee notes that the State party awarded monetary compensation in the above-mentioned case (arts. 2 and 12).

16. **The State party should draw lessons from the judicial proceedings in relation to the death of Ramdoolar Ramlogun and bring about the necessary changes to ensure accountability for acts of torture.**

**Non-refoulement**

17. The Committee notes the explanation provided by the delegation that the geographic configuration of the State party and its limited resources constrain its capacity to receive and accept asylum seekers and refugees. Moreover, it notes that provisions on the protection of human rights and the right to appeal an extradition decision were introduced into the Extradition Act of 2017. Nevertheless, the Committee is concerned at the lack of a legal and procedural framework for safeguarding the rights of persons in need of international protection who are present on the State party's territory (art. 3).

18. **The State party should establish a legal and procedural framework regulating expulsion and refoulement so as to safeguard the rights of persons in need of international protection, in accordance with article 3 of the Convention. The Committee also encourages the State party to consider ratifying the Convention relating to the Status of Refugees, the Protocol relating to the Status of Refugees and the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa.**

**Fundamental legal safeguards**

19. The Committee notes the information provided by the State party that the right to legal counsel and to have access to a doctor is guaranteed to arrested and detained persons in police custody and that information thereon is properly recorded. At the same time, the Committee is concerned that doctors' visits take place under supervision for safety and security reasons as a matter of routine (art. 2).

20. **The State party should:**

(a) **Stipulate in police standing orders and other relevant regulations that doctors' visits to arrested and detained persons be conducted in a confidential manner and that supervision, when requested by the doctor, be within sight but out of hearing distance;**

**(b) Improve the mechanism for monitoring the fundamental safeguards afforded to detainees by including detailed information on, inter alia, access to a lawyer and medical visits in the records transmitted to the police information room and the divisional or branch operations.**

**Arrest and pretrial detention**

21. The Committee is concerned at the number of arrests made in the State party without passing the test of reasonable suspicion of having committed an offence. Moreover, the Committee notes the explanation provided by the delegation that the pattern of pretrial detention is attributable to the complexity of investigations of drug-related crimes with international ramifications. At the same time, it remains concerned that as a result, pretrial detention is increasingly used and that some detainees have been in pretrial detention for as long as three years. More generally, the Committee is concerned at the slowness of judicial procedures in the State party (arts. 2, 11, 12 and 16).

22. **The State party should:**

**(a) Specify in its enactments, including in the police and criminal evidence act to be adopted, safeguards for ensuring the full justification of arrests and detentions, and provide the necessary training thereon to law enforcement personnel and members of the judiciary;**

**(b) Strengthen efforts to promote the use of alternative and non-custodial measures to reduce the number and length of pretrial detentions. Pretrial detention should be used only as a means of last resort, in exceptional circumstances, and for limited periods, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules);**

**(c) Take the necessary measures to reduce the delays in criminal proceedings.**

**Inadmissibility of statements made as a result of torture**

23. The Committee is concerned at reports about the overreliance of the police in the State party on confessions for the purpose of investigation and prosecution and at reports of extraction of confessions under duress. The Committee also notes with regret the lack of information on cases where officials have been charged for having coerced arrested persons into giving evidence. Moreover, the Committee is concerned at the judicial culture whereby an appellate court would rarely quash a conviction based on a statement that the trial court had deemed admissible (arts. 2 and 15).

24. **The Committee urges the State party to:**

**(a) Expedite the installation of video and audio recording facilities in police stations to ensure the monitoring of interrogation procedures;**

**(b) Redouble efforts to improve methods of investigation based on scientifically-based evidence, including training police officers on non-coercive interrogation methods;**

**(c) Make the necessary legislative changes so that statements obtained through torture or cruel, inhuman or degrading treatment are invalidated as evidence;**

**(d) Permit appeal courts to review the admissibility of evidence, building on the jurisprudence of the Supreme Court in the case of *Rudolph Jean Jacques v the State*;**

**(e) Investigate all reports of extraction of confession allegedly obtained under duress, prosecute alleged perpetrators and punish anyone found responsible, and ensure that such testimony is not allowed to be entered as evidence.**

**Juvenile justice**

25. *The Committee notes the information provided* by the delegation of the State party that in camera proceedings could be considered for hearings involving minors. The

Committee is nevertheless concerned that, under section 4 (2) (b) of the Juvenile Offenders Act, the trial takes place before the ordinary court if a juvenile is charged jointly with an adult. It is also concerned at the lack of a statutory minimum age of criminal responsibility (arts. 2, 12 and 16).

26. **Referring to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the Committee recommends that, in the revision of relevant laws, including the juvenile justice bill and the draft children's bill:**

(a) **The State party establish a statutory minimum age of criminal responsibility at an internationally acceptable level;**

(b) **Provisions be made to ensure that children in conflict with the law are tried in juvenile courts by specialized judges.**

**Sentencing rules**

27. The Committee is concerned that different rules have been applied by the Supreme Court of the State regarding the deduction of the time spent on remand from the sentence (arts. 11 and 16).

28. **The State party should lay down in law that time served in pretrial detention be deducted from the sentence, as advised by the Supreme Court in its Kamasho ruling.**

**Conditions of detention**

29. The Committee is concerned at reports of poor hygiene and inadequate access to food and water in the State party's prisons (arts. 11 and 16).

30. **The State party should promptly improve material conditions in its prisons by guaranteeing the right of all detainees to the basic rights to water, sanitation and adequate food, in keeping with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). The Committee also invites the State party to make public the report of the Subcommittee on Prevention of Torture on its visit in 2007.**

**Complaint mechanisms**

31. The Committee is concerned at reports of torture and ill-treatment by law enforcement officials, which on some occasions have led to death. Moreover, while noting the large number of complaints lodged against the police, which indicates that existing procedures are accessible, the Committee is concerned that very few cases have been referred to the Director of Public Prosecutions and to the Attorney-General's Office since the establishment of the Police Complaints Division. The Committee also notes that the Division will be replaced by the Independent Police Complaints Commission (arts. 2, 12 and 13).

32. **The State party should:**

(a) **Promptly and thoroughly investigate in an impartial manner all complaints of torture and ill-treatment by law enforcement officials and, as warranted, submit the alleged perpetrators to public prosecution;**

(b) **Ensure that the new Independent Police Complaints Commission has the necessary capacity to carry out timely, impartial and exhaustive inquiries into complaints of improper conduct by the police and that the difficulties encountered by the Police Complaints Division are taken into account when designing the procedures and operations of the new institution;**

(c) **Mandate the Commission to issue recommendations on corrective measures to prevent future misconduct by law enforcement officials and the improper treatment of arrested and detained persons.**

**Independence of oversight and complaint bodies**

33. The Committee is concerned that the independence of the National Human Rights Commission, including its National Preventive Mechanism Division, as well as the Independent Police Complaints Commission that is about to become operational, is not guaranteed under the current legislation, especially in the light of the power held by the President of the State party to remove the members of these institutions (arts. 2 and 11–13).

34. **The State party should guarantee the independence of the National Human Rights Commission and its National Preventive Mechanism Division as well as that of the Independent Police Complaints Commission, including by securing in law the tenure of the mandate of their members. The Committee refers the State party to the principles relating to status of national institutions for the promotion and protection of human rights (the Paris Principles).**

**Redress and reparation**

35. The Committee notes with concern that, in the State party's legislation, redress and reparation for victims of torture are limited to monetary compensation (art. 14).

36. **The State party should ensure that legal provisions and procedures are in place to enable victims of torture and ill-treatment to access and enjoy the right to adequate and appropriate redress, including restitution, compensation, as full rehabilitation as possible, satisfaction and right to truth, as well as guarantees of non-repetition. In this regard, the Committee refers the State party to its general comment No. 3 (2012) on the implementation of article 14.**

**Violence against women police officers**

37. The Committee is concerned that none of the complaints of sexual harassment and assault filed by female police officers have hitherto resulted in criminal charges. It is also concerned at the prolonged delay in their resolution (arts. 2, 12 and 13).

38. **The State party should:**

(a) **Ensure that complaints mechanisms for violence against women police officers are effective, gender-sensitive and gender-responsive;**

(b) **Conduct further investigation into the slowness of proceedings in cases of violence against women police officers and provide detailed information about the state of investigation of these cases;**

(c) **Ensure that such violence is prevented through, inter alia, gender-sensitive trainings.**

**Training**

39. The Committee notes the various training provided to police and prison officers on human rights. However, it notes with regret that specific and systematic training on the Convention and its Optional Protocol is limited (art. 10).

40. **The State party should ensure that training programmes on the Convention and its Optional Protocol be extended to all law enforcement personnel, including both civil and military; medical personnel; public officials; and other persons dealing with persons deprived of their liberty. Such training should include the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol). The State party should also assess the impact or results of these programmes.**

**Violence against women**

41. While welcoming the fact that the State party has taken various steps, including the adoption of a national action plan to end gender-based violence, the passing of an amendment to broaden the definition of domestic violence, and recognition in the

constructive dialogue that "the eradication of domestic violence is a long-term undertaking", the Committee is concerned that:

(a) Marital rape has not yet been criminalized;

(b) The provisions of section 242 of the Criminal Code relating to manslaughter in cases of adultery have not been repealed;

(c) The perpetrators of trafficking-related crimes have not been prosecuted and convicted under the Combating of Trafficking in Persons Act, largely because other laws are still used instead (arts. 1, 2 and 16).

42. **The State party should pursue its efforts to modernize its criminal legislation to address cases of violence against women, including domestic violence and trafficking, by, inter alia:**

(a) **Defining marital rape as a specific criminal offence with appropriate penalties;**

(b) **Abrogating section 242 of the Criminal Code, which excuses manslaughter committed against a spouse caught in the act of adultery;**

(c) **Promoting awareness and the actual use of the Combating of Trafficking in Persons Act.**

**Follow-up procedure**

43. **The Committee requests the State party to provide, by 6 December 2018, information on follow-up to the Committee's recommendations on interrogation methods and confessions obtained under duress, conditions of detention, and complaint mechanisms (see paras. 24 (a), (b), (d) and (e), 30 and 32 above). In that context, the State party is invited to inform the Committee about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations in the concluding observations.**

**Other issues**

44. **The Committee recommends that the State party consider making the declarations under articles 21 and 22 of the Convention recognizing the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction.**

45. **The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet party.**

46. **The State party is requested to disseminate widely the report submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.**

47. **The State party is invited to submit its fifth periodic report by 6 December 2021. For that purpose, and in view of the fact that the State party has agreed to report to the Committee under the simplified reporting procedure, the Committee will, in due course, transmit to the State party a list of issues prior to reporting. The State party's replies to that list of issues will constitute its fifth periodic report under article 19 of the Convention.**